Federal Communications Commission
2006 Biennial Regulatory Review
IB Docket No. 06-154

International Bureau
Staff Report
February 14, 2007

I. OVERVIEW

1. The International Bureau administers policy for the authorization and regulation of international telecommunications facilities and services, as well as policy for licensing and regulating satellite facilities and services. The Bureau represents the Commission in international settings, as well as in bilateral and multilateral meetings.[1] The Bureau directs and coordinates negotiations with Mexico, Canada and other countries regarding spectrum use and interference protection. The Bureau also provides assistance in telecommunications trade negotiations, and provides regulatory assistance and training programs to foreign governments.

2. The International Bureau seeks to facilitate the introduction of new services, and to provide customers with more choices, more innovative services, and competitive prices. The Commission's biennial regulatory review complements the Bureau's streamlining efforts. The Bureau has taken a proactive approach in its rulemakings to remove unnecessary regulatory constraints, wherever possible and practicable. It continually reviews its rules and policies to respond to changing conditions and developments in the industry.

II. SCOPE OF REVIEW

3. The International Bureau staff reviewed all of the rules applicable to telecommunications service that the Bureau administers, including rules that fall outside of the scope of section 11 of the Communications Act, as amended (Communications Act).[2] Specifically, the staff reviewed:

Part 23 – International Fixed Public Radio Communication Services – Contains rules applicable to international terrestrial fixed communications systems, including general licensing and application filing requirements, technical standards, and operations.

[1] The Bureau represents the Commission in matters such as spectrum planning, terrestrial and satellite issues, standards, and broadcasting. Major fora include the International Telecommunication Union (ITU), the World Radio Communication Conference, and various regional organizations, such as the Asia-Pacific Economic Cooperation (APEC), the Inter-American Telecommunications Conference (CITEL), and the Organization for Economic Cooperation and Development (OECD).

[2] 47 U.S.C. § 161. The scope of review under section 11 is discussed in the Commission's *2002 Biennial Regulatory Review*, GC Docket No. 02-390, Report, 18 FCC Rcd 4726 (2002) *aff'd sub nom. Cellco Partnership d/b/a Verizon Wireless v. FCC & USA,* 357 F.3d 88 (D.C. Cir. 2004).

Part 25 – Satellite Communications – Contains rules applicable to satellite communications, including general licensing and application filing requirements, technical standards, and operations.[3]

Part 43 – Reports of Communication Common Carriers and Certain Affiliates – Contains rules requiring certain reports by common carriers, including reports regarding different facets of international telecommunications.

Part 63 – Extension of Lines, New Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status – Contains rules applicable to common carriers, including application filing requirements for international section 214 authorizations.

Part 64 – Miscellaneous Rules Relating to Common Carriers – Subpart J contains rules regarding international settlements and accounting rates.

4. In addition, the Commission issued a Public Notice requesting comment on which rules within the purview of the International Bureau should be modified or repealed as part of the 2006 biennial review process.[4] Two comments and no replies were filed in response to the Public Notice.[5]

5. A review of the rules applicable to telecommunications service within the purview of the International Bureau, and the staff recommendations regarding whether the rules should be retained, modified or eliminated pursuant to section 11 of the Communications Act,[6] are contained in the appendices to this report.

III. RECENT AND ONGOING ACTIVITIES

A. Satellite

1. Introduction and Background

6. Part 25 of the Commission's rules forms the basis for the Commission's "Open Skies" policy under which a wide range of systems have

[3] A satellite licensee may operate on either a common carrier or non-common carrier basis. *See* 47 C.F.R. § 25.114(c)(11).

[4] *The Commission Seeks Public Comment in 2006 Biennial Review of Telecommunications Regulations,* Public Notice, 21 FCC Rcd 9422 (2006) (*2006 Biennial Review Public Notice*).

[5] The comments were filed by the Satellite Industry Association (SIA) and the Navajo Nation Telecommunications Regulatory Commission (Navajo Commission).

[6] 47 U.S.C. § 161.

been licensed to provide satellite services.[7] Through this policy, the Bureau attempts to accommodate the maximum number of systems possible to provide a particular service in order to maximize entry and competition in the satellite service market.

2. Space Station Licensing

7. The Commission has streamlined the space station licensing process whenever possible. In prior Biennial Review Reports, the Bureau has summarized many of its streamlining efforts since 1996.[8] Most significant among those efforts was the 2003 *First Space Station Reform Report and Order*.[9] In that Order, the Commission established two different streamlined procedures for licensing satellites. The Commission adopted a modified processing round approach for satellites that communicate with earth stations with omni-directional antennas and adopted a novel first-come-first-served procedure for most other satellite systems.[10] The Commission anticipated that implementation of these procedures would result in a reduction of the time required for satellite license processing from two to three years to less than one year.[11]

8. The Bureau's experience with the new procedures has been consistent with the Commission's expectations. Under the previous satellite licensing procedures, the Commission often required two to three years to act on a license application for a geostationary satellite orbit (GSO) satellite. Under the

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[7] *See Establishment of Domestic Communication-Satellite Facilities by Non-Government Entities*, Report and Order, 22 FCC 2d 86 (1970), Second Report and Order, 35 FCC 2d 844 (1972), recon. in part, Memorandum Opinion and Order, 38 FCC 2d 665 (1972); *see also* 47 C.F.R. Part 25.

[8] *International Bureau, Federal Communications Commission, Biennial Regulatory Review 2002*, IB Docket No. 02-309, Staff Report, 18 FCC Rcd 4196 (2002); *Federal Communications Commission, 2004 Biennial Review*, International Bureau Staff Report, IB Docket No. 04-177, 20 FCC Rcd 343 (2005), *citing, e.g.*, *Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures*, Report and Order, 11 FCC Rcd 21581 (1996) (*1996 Streamlining Order*); *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, and DBS Petition for Declaratory Rulemaking Regarding the Use of Transponders to provide International DBS Service*, Report and Order, 11 FCC Rcd 2429 (1996) (*DISCO I*); *Amendment of the Commission's Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, IB Docket No. 96-111, Report and Order, 12 FCC Rcd 24094 (1997) (*DISCO II*), *recon*., 15 FCC Rcd 7207 (1999) (*DISCO II First Reconsideration Order*).

[9] *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34 and 02-54, First Report and Order and Further Notice of Proposed Rulemaking and First Report and Order , 18 FCC Rcd 10760 (2003) (*First Space Station Reform Report and Order*).

[10] The first-come-first-served procedure does not apply to authorization of Direct Broadcast Satellite (DBS), Digital Audio Radio Service (DARS), or replacement satellites. *Id.* at 10764 n.4 (DBS and DARS); *Id.* at 10856 ¶ 253 (replacement satellites).

[11] *First Space Station Reform Report and Order,* at ¶ 1.

new procedures, the average time needed has decreased to about nine months to one year.

3. International Satellite Coordination

9. The International Telecommunication Union (ITU) has established a satellite coordination process to facilitate the harmonious use of satellite orbits and spectrum among Administrations.[12] Satellite coordination occurs by negotiating mutually satisfactory solutions among the affected parties. All space segment licenses that the Commission issues must comply with ITU coordination requirements and international agreements. To eliminate delay of pending international coordination, however, the Commission processes space segment applications and typically approves them before coordination is complete. All authorizations are subject to possible changes that may be necessary to conform to final coordination agreements. This approach saves satellite applicants substantial time. In addition, the Commission has developed processes that allow U.S. satellite operators to negotiate directly with satellite operators of other countries. The Commission reviews and finalizes any operator arrangements before agreeing to them. This process saves staff resources and permits the satellite operators to have some decisional role in the authorization process.

10. The staff and the industry, along with the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, and the U.S. Department of State also are working together to propose solutions to the backlog of coordination filings at the ITU. These meetings help the staff when participating in the occasional international meetings scheduled by the ITU to address this backlog issue. There is a need to reduce the time it takes for the ITU to process a coordination request because it has a direct effect on the international coordination process and on our licensing process. While work on this issue continues, there is no final resolution at this time.

4. Earth Station Licensing

11. The Commission "routinely" licenses earth station facilities that meet technical standards in Part 25, which are designed to enable those earth stations to communicate with a Geostationary Orbit (GSO) satellite without causing harmful interference to another GSO satellite as close as 2° away. In other words, routine earth station applications are granted once the Commission determines that they meet the Part 25 technical standards, without a detailed, case-by-case technical review. It is possible in some cases for an earth station that does not meet all of the technical standards of Part 25 to operate without causing unacceptable interference in a 2° space station GSO orbital spacing environment.

[12] Within the ITU, Member States (Administrations/Governments) and Sector Members (private entities) cooperate to maintain and extend telecommunications globally.

The Commission conducts a case-by-case review of each of these "non-routine" earth stations to determine whether the application can be granted.

12. As part of efforts to streamline its procedures for routine earth station applications, the Bureau instituted a process that automatically grants routine earth station applications proposing to use the Ku-band fixed-satellite service frequencies (14.0-14.5 GHz / 11.7-12.2 GHz) to communicate with all satellites authorized to provide service to the United States.[13] Such routine earth station applications are usually granted about 35 days from the date on which the application appears on public notice, provided that no objections are filed during the public comment period. The Bureau has also reduced the number of emission designators required to be identified in applications for digital systems.[14] This modification significantly reduces the time necessary to enter earth station information into the Commission's database, and largely eliminates the need for earth station operators to file modification applications when they wish to add a new emission. The Bureau has also extended its auto-grant program to routine earth station applications proposing to use the C-band fixed-satellite service frequencies (3700-4200 MHz / 5925-6425 MHz) to communicate with all satellites authorized to provide service to the United States.[15]

13. As part of the 2000 biennial review process, in the *Part 25 Earth Station Streamlining NPRM,* the Commission instituted a rulemaking proceeding to consider whether to increase power limits in Part 25 for certain earth stations, in order to increase the proportion of earth station applications that can be considered on a routine basis.[16] In addition, the Commission invited comment on two procedures for streamlining the procedures for non-routine earth station applications considered on a case-by-case basis. One procedure would allow the Commission to require the applicant proposing a small antenna to operate at a lower power level, in order to compensate for the use of the smaller antenna diameter.[17] The second procedure would allow applicants to submit affidavits from operators of satellites potentially affected by the proposed non-routine earth station, showing that the operation of the non-routine earth station has been coordinated with other affected satellite systems.[18] The Commission also

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[13] *See Commission Launches Earth Station Streamlining Initiative*, Public Notice, DA 99-1259 (rel. June 25, 1999).

[14] Emission designators are a shorthand method used to define the frequency bandwidth and the modulation technique and type of service or combination of services.

[15] *See Commission Launches C-Band Earth Station Streamlining Initiative,* Public Notice, DA 00-2761 (rel. Dec. 7, 2000).

[16] *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd 25128.

[17] *Id.*, 15 FCC Rcd at 25135-36 ¶¶ 15-19.

[18] *Id.*, 15 FCC Rcd at 25136-37 ¶¶ 20-24.

considered a number of other streamlining measures, such as allowing routine Ku-band temporary fixed earth stations to begin operations immediately upon placement of the application on public notice, rather than waiting for the license grant.[19]

14. In 2005, the Commission adopted its proposals for streamlined procedures for non-routine earth station applications.[20] In addition, the Commission sought comment on whether creating an off-axis EIRP envelope for C-band and Ku-band FSS earth stations would further streamline the earth station procedure.[21] That proceeding is still pending.

15. Finally, in the *Part 25 Earth Station Streamlining NPRM,* the Commission has also invited comment on revising or eliminating Part 23, governing International Fixed Public Radiocommunication Services (IFPRS).[22] Because no one commented on that proposal, the Commission started a new rulemaking proceeding to consider eliminating Part 23 and making IFPRS subject to the rules for domestic point-to-point microwave services.[23] That rulemaking is still pending.

B. Telecommunications

1. Section 214 Applications

16. The Commission has streamlined its international 214 application processes. In 1996, the Commission created an expedited process for global, facilities-based section 214 applications.[24] The Commission permitted applicants

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[19] *Id.*, 15 FCC Rcd at 25143 ¶ 42.

[20] 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, *Fifth Report and Order*, IB Docket No. 00-248, 20 FCC Rcd 5666 (2005) (*Part 25 Earth Station Streamlining Fifth Report and Order*); 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, *Sixth Report and Order and Third Further Notice of Proposed Rulemaking*, IB Docket No. 00-248, 20 FCC Rcd 5593 (2005) (*Part 25 Earth Station Streamlining Sixth Report and Order*).

[21] *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Sixth Report and Order and Third Further Notice of Proposed Rulemaking, IB Docket No. 00-248, 20 FCC Rcd 5593, 5622 (2005) (*Part 25 Earth Station Streamlining Third Further Notice*).

[22] *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25145 ¶¶ 48.

[23] *Elimination of Part 23 of the Commission's Rules*, Notice of Proposed Rulemaking, IB Docket No. 05-216, 20 FCC Rcd 11416 (2005) (*Part 23 Notice*).

[24] *See Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996). The Commission initiated the international Section 214 streamlining process in 1985. *See International Competitive Carrier Policies*, Report and Order, 102 FCC

to apply for section 214 authorizations on a global or limited basis, reduced paperwork obligations, streamlined tariff requirements for non-dominant international carriers, and ensured that essential information is readily available to all carriers and users. The new regulations facilitate entry into the U.S.-international telecommunications market and the expansion of international services to the benefit of U.S. consumers and competition.

17. As part of its 1998 biennial regulatory review process, the Commission took additional steps to reduce certain regulatory requirements placed on providers of international telecommunications services in light of market changes.[25] The Commission streamlined its procedures for granting international section 214 authorizations to provide international services, and increased the categories of applications eligible for streamlined processing. The vast majority of international section 214 applicants now qualify for streamlined processing, and can provide service starting on the 15th day after public notice. Carriers already providing service can complete *pro forma* transfers of control and assignments of their authorizations without prior Commission approval. Carriers also can provide service through their wholly-owned subsidiaries without separate Commission approval. Authorized carriers are able to use any authorized U.S.-licensed or non-U.S.-licensed undersea cable systems to provide their authorized services.

18. As part of the 2000 biennial regulatory review process, the Commission took further steps to remove unnecessary requirements on international carriers.[26] The Commission revised the rules for *pro forma* transfers and assignments of international section 214 authorizations to give carriers greater flexibility in structuring transactions. These changes also assist carriers by making the rules more consistent with the procedures used for other service authorizations, particularly for the Commercial Mobile Radio Service (CMRS). The Commission also clarified the international discontinuance rules and, consistent with domestic service rules, exempted CMRS carriers from the discontinuance requirements. The Commission further narrowed one of the section 214 benchmark conditions, so that it only applies to the provision of U.S.-international facilities-based switched services for facilities-based U.S. carriers affiliated with dominant foreign carriers.

2d 812 (1985); *recon. denied*, 60 RR2d 1435 (1986); *modified*, *Regulation of International Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992).

[25] *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909 (1999) (*1998 International Biennial Review Order*).

[26] *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket 00-231, Report and Order, 17 FCC Rcd 11416 (2002) (*2000 International Biennial Review Order*) *aff'd sub nom. Cellco Partnership d/b/a Verizon Wireless v. FCC & USA*, 357 F.3d 88 (D.C. Cir 2004).

19. In the *Parts 1 and 63 NPRM* the Commission sought comment on a number of potential changes to the international section 214 authorization process and rules relating to the provision of international service.[27] Specifically, the Commission sought comment on whether to amend the procedures for discontinuing an international service to be more consistent with the procedures for discontinuing a domestic service. The Commission also sought comment on ways to lessen the burdens placed on CMRS carriers by the international section 214 application process. Finally, the Commission sought comment on whether to amend the rules to allow commonly-controlled subsidiaries to use their parent's section 214 authorization to provide international service.

2. Foreign Participation

20. The Commission has sought to foster an increasingly competitive international telecommunications market by adopting policies that promote foreign participation in the U.S.-international market. To make the provision of U.S.-international services more competitive, the Commission has streamlined its market access policies in response to the U.S. commitments made pursuant to the WTO Basic Telecommunications Agreement, the commitments of trading partners, and the Commission's improved regulatory framework. For example, the Commission has simplified its own licensing and authorization rules in ways that have facilitated entry into the U.S. market by foreign competitors. In the *Foreign Participation Order,* the Commission adopted a rebuttable presumption ("open entry standard") in favor of entry by foreign applicants from WTO Members applying for section 214 authorization, submarine cable landing licenses, and foreign indirect investment in excess of 25 percent in Title III common carrier, aeronautical fixed and route radio licenses pursuant to section 310(b)(4).[28] In addition, the Commission defers to Executive Branch agencies on national security, law enforcement, foreign policy, and trade policy concerns raised in an application. With respect to non-WTO Members, the Commission continues to apply the Effective Competitive Opportunities (ECO) test for applications. In the *Foreign Participation Reconsideration Order*, the Commission affirmed these policies and clarified and revised certain aspects of the foreign carrier affiliation notification requirement in section 63.11 of the Commission's rules to respond to carrier concerns about the purpose and application of the rule.[29] In that proceeding, the Commission reduced the prior notification period from 60 to 45 days, and permitted certain classes of foreign

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[27] *Amendment of Parts 1 and 63 of the Commission's Rules*, IB Docket 04-47, Notice of Proposed Rulemaking, 19 FCC Rcd 13276 (2004) (*Parts 1 and 63 NPRM*).

[28] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market,* IB Docket 97-142, Report and Order and Order on Reconsideration, 12 FCC Rcd 23 891 (1997) (*Foreign Participation Order*), *recon.* 15 FCC Rcd 18158 (2000) (*Foreign Participation Reconsideration Order*).

[29] *Foreign Participation Reconsideration Order*, 15 FCC Rcd 18158.

carriers to submit post-notifications of foreign affiliations in lieu of prior notifications.

3. International Settlements Policy

21. The Commission has taken action to remove regulatory impediments and to increase competition in the international telecommunications marketplace through reform of the longstanding international settlements policy (ISP).[30] The Commission's primary goal underlying this policy has been and continues to be the protection of U.S. consumers from potential harm caused by instances of insufficient competition in the global telecommunications market. As a result of increasing competition internationally and the Commission's Benchmarks Policy, the average U.S. settlement rate has fallen substantially over the last several years, as have U.S. calling prices.[31]

22. As part of the 1998 biennial regulatory review process, the Commission adopted sweeping deregulatory inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.[32] Specifically, the Commission: (1) eliminated the international settlements policy and contract filing requirements for arrangements with foreign carriers that lack market power; (2) eliminated the international settlements policy for arrangements with all carriers on routes where rates to terminate U.S. calls are at least 25 percent lower than the relevant settlement rate benchmark previously adopted by the Commission in its *Benchmark Order*;[33] (3) adopted changes to contract filing requirements to permit U.S. carriers to file, on a confidential basis, arrangements with foreign carriers with market power on routes where the international settlements policy is removed; (4) adopted procedural changes to simplify accounting rate filing requirements; and (5) eliminated the flexibility

[30] The International Settlements Policy provides a regulatory framework within which U.S. carriers negotiate with foreign carriers to provide bilateral U.S.-international services. There are three elements of the ISP that serve as conditions on U.S. carriers entering into agreements with foreign carriers: (1) all U.S. carriers must be offered the same effective accounting rate and same effective date for the rate ("nondiscrimination"); (2) U.S. carriers are entitled to a proportionate share of U.S.-inbound, or return, traffic based upon their proportion of U.S.-outbound traffic ("proportionate return"); and (3) the accounting rate is divided evenly 50-50 between U.S. and foreign carriers for U.S. inbound and outbound traffic ("symmetrical settlement rates").

[31] *See International Settlements Policy Reform; International Settlement Rates*, IB Docket 02-324, Notice of Proposed Rulemaking, 17 FCC Rcd 19954, 19964-66 (2002) (*ISP Reform NPRM*).

[32] *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements* (Phase II), IB Docket No. 98-148, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999).

[33] *See International Settlement Rates,* IB Docket No. 96-261, Report and Order*,* 12 FCC Rcd 19806 (1997) (*Benchmarks Order*), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), Report and Order on Reconsideration and Order Lifting Stay*,* 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*).

policy in recognition that the reforms to the international settlements policy render the flexibility policy largely superfluous.

23. In the *2004 International Settlements Policy Reform Order*, the Commission concluded that the public interest is served by reforming the Commission's longstanding ISP policy.[34] The Commission found increasing competition on many U.S.-international routes, accompanied by lower settlement rates and calling prices for U.S. customers, thereby permitting it to adopt a more limited application of the ISP. It removed the ISP from all routes on which the carriers had negotiated benchmark-compliant rates. Lifting the ISP on those routes allows U.S. carriers greater flexibility to negotiate arrangements with foreign carriers. The Commission determined that this approach would encourage market-based arrangements between U.S. and foreign carriers that would further long-standing policy goals of greater competition in the U.S.-international market and more cost-based rates for U.S. consumers. The Commission also modified current contract filing requirements with respect to non-ISP routes. Furthermore, in view of the removal of the ISP from benchmark-compliant routes, the Commission eliminated its ISR policy[35] and associated filing requirements. The Commission also adopted certain regulatory safeguards to protect U.S. customers from anticompetitive conduct should it occur in the future. The Commission retained the current benchmarks policy subject to further evaluation as to whether future modifications are warranted. Finally, the Commission amended its rules to reflect and implement the actions taken in this proceeding.

24. In 2004, the Commission initiated a proceeding to determine whether foreign mobile termination rates impact U.S. consumers and competition in the international telecommunications market.[36] In 2005, the Commission adopted a Notice of Inquiry seeking comment on ways to improve the process available to the Commission to protect U.S. consumers from the effects of anticompetitive or "whipsawing" conduct by foreign carriers.[37] In addition, on

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[34] *International Settlements Policy Reform, International Settlement Rates Order,* IB Docket 02-324, First Report and Order, 19 FCC Rcd 5709*,* ¶ 43 (2004) *(2004 ISP Reform Order)*.

[35] International Simple Resale (ISR) involves the provision of switched services over resold or facilities-based private lines that connect to the public switched network at either end-point. ISR policy seeks to prevent potential harm to U.S. consumers and competition by promoting more cost-based settlement rates on U.S.-international routes. Instead of U.S. carriers paying for the use of half of a shared circuit to a foreign point through traditional settlement payments, U.S. carriers under ISR arrangements may connect or lease a complete or whole circuit end-to-end to the corresponding foreign carrier's network and pay a negotiated rate for termination of services on the foreign network that does not comply with the strict requirements of the ISP.

[36] *Effect of Foreign Mobile Termination Rates on U.S. Customers*, IB Docket No. 04-398, Notice of Inquiry, 19 FCC Rcd 21395 (2004).

[37] *Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct,* IB Docket 05-254, Notice of Inquiry, 20 FCC Rcd 14096 (2005).

March 13, 2006, AT&T, Sprint Nextel Corporation and Verizon filed a joint petition requesting that the Commission remove the ISP requirements from the remaining U.S. international routes that are subject to the ISP.[38] These proceedings are ongoing.

4. Reporting Requirements

25. The Commission is continually reviewing its reporting requirements to determine if they can be revised to lessen the burdens placed on carriers while maintaining their important purpose. The information provides the Commission, other government agencies, state regulators, international organizations, industry, and the public with valuable information on market and other industry trends and developments. This information is helpful to the Commission in identifying developments in regulatory issues, monitoring compliance with existing rules and policies, and evaluating the effects of policy choices.

26. As part of the 2000 biennial regulatory review process, the Commission took actions to reduce reporting requirements on CMRS carriers and to eliminate an outdated rule.[39] At the request of CMRS carriers, the Commission reviewed the reporting requirements for carriers providing international service and found that it was no longer necessary for CMRS carriers providing resale of international switched services to file quarterly traffic and revenue reports pursuant to section 43.61 of the Commission's rules. The Commission also eliminated an outdated rule that required certain foreign-owned carriers to file with the Commission annual revenue and traffic reports with respect to all common carrier telecommunication services they offered in the United States.

27. In the *International Reporting Requirements NPRM*, the Commission initiated a rulemaking proceeding to examine the reporting requirements to which carriers providing U.S. international services are subject under Part 43 of the Commission's rules.[40] The Commission sought comment on several changes to simplify the reporting requirements and to ensure the usefulness of the data collected by the Commission. The proposals seek to further the Commission's goal of protecting U.S. consumers and U.S. carriers from anti-competitive conduct, ensuring that consumers enjoy more choice in

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[38] *Joint Petition for Rulemaking to Further Reform the International Settlements Policy,* RM-11322 (filed by AT&T Inc., Sprint Nextel Corporation and Verizon on March 13, 2006). *See Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Public Notice, Report No. 2764 (rel. March 20, 2006).

[39] *2000 International Biennial Review Order,* 17 FCC Rcd 11416.

[40] *See Reporting Requirements for U.S. Providers of International Telecommunications Services*, IB Docket 04-112, Notice of Proposed Rulemaking, 19 FCC Rcd. 4231 (2004) (*International Reporting Requirements NPRM*).

telecommunications services and decreasing prices for international calls, without imposing unnecessary burdens on carriers. Specifically, the Commission sought comment on whether to: retain the annual traffic status reporting requirements; eliminate the requirement that carriers report the number of messages they carry during the year; eliminate the requirement to file traffic and revenue reports and circuit-status reports for traffic between the continental United States and U.S. off-shore points or between off-shore U.S. points; establish a revenue threshold for a carrier to file annual traffic and revenue reports for pure resale services; establish a revenue threshold for which miscellaneous services a carrier must report; change the filing dates for the circuit-status, traffic and revenue reports; and, simplify and improve the reporting requirements as recommended by the staff of the International Bureau and the Wireline Competition Bureau. The Commission also sought comment on whether to retain the quarterly traffic and revenue reporting requirements placed on large carriers[41] and on foreign-affiliated carriers.[42] The Commission also proposed to repeal the requirement for U.S. carriers to report their contracts with foreign carrier correspondents governing the division of international tolls for telegraph communications.[43]

IV. SUMMARY OF BIENNIAL REGULATORY REVIEW

28. The Commission has a number of pending proceedings in which it is considering repeal or modification of rules within the purview of the International Bureau. In the *International Reporting Requirements NPRM*, the Commission invited comment on several changes to simplify the reporting requirements and to ensure the usefulness of the data collected by the Commission.[44] In the *Parts 1 and 63 NPRM,* the Commission invited comment on several potential changes to our international section 214 authorization process and the rules relating to the provision of United States international telecommunications services.[45] In the *Part 23 Notice* the Commission has concluded that in its current form Part 23 may no longer be necessary in the public interest and accordingly is considering repeal or modification of the rules.[46]

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41 47 C.F.R. § 43.61(b).

42 47 C.F.R. § 43.61(c).

43 47 C.F.R. § 43.51.

44 *International Reporting Requirements NPRM*, 19 FCC Rcd 4231.

45 *Parts 1 and 63 NPRM*, 19 FCC Rcd 13276.

46 Elimination of Part 23 of the Commission's Rules, *Notice of Proposed Rulemaking*, IB Docket No. 05-216, 20 FCC Rcd 11416, 11420 ¶ 8 (2005) (*Part 23 Notice*).

29. As a result of our review here, we recommend that the Commission initiate a proceeding to shorten its international section 214 application review process for applications that qualify for streamlined processing under the current rules. We believe that the 14-day review process is unnecessary.[47] The U.S.-international telecommunications market continues to be increasingly competitive with the addition of new competitors each year. In addition, as part of that proceeding, we recommend that the Commission consolidate, reorganize, and clarify Commission rules and regulations on international facility and service authorizations contained in Part 63 of Title 47. Specifically, other Parts of Title 47, including Parts 1, 43 and 64, contain applicable substantive and procedural rules that, when read with Part 63, provide applicants, whether new or existing, with a complete picture of the licensing, reporting and compliance requirements that apply to international common carriers. Consolidation of these Parts would align all rules applicable to entrance into and provision of international services, reduce confusion among applicants, reduce the amount of time that Commission staff currently spends in discussing applications with applicants, and create a consistent, cohesive and logical approach to applying for and maintaining international authority for operations of facilities and provision of international services. The Commission has addressed specific sections and subsections of Part 63 in recent years, but has not undertaken a comprehensive review of Part 63 beyond that required by section 11. We recommend that the Commission undertake such comprehensive review.

30. We also recommend initiation of a proceeding to consider the proposal from AT&T, Sprint Nextel, and Verizon to remove the ISP requirements from the remaining international routes that are subject to the ISP and in the same proceeding to propose changes in the Commissions rules in Part 64 Subpart J of our rules to improve the process available to the Commission to protect U.S. consumers from the effects of anticompetitive conduct by foreign carriers. The proceeding would be initiated based upon the records established by U.S. carriers to eliminate the ISP and 2005 Notice of Inquiry concerning anticompetitive conduct by foreign carriers. We believe that the Commission consideration of eliminating the ISP should be accomplished by consideration of ways to strengthen its rules against anticompetitive conduct.

31. Moreover, in the Appendix of this report, the Bureau recommends initiating rulemaking proceedings to consider modifying or eliminating rules in Part 25 Subpart B of our regulations related to analog satellite and earth station transmissions, Ka-band earth stations licensing procedures, Special Temporary Authority (STA) requests, and major and minor modification applications.

[47] We recognize that any changes to the Commission's processing schedule for international section 214 applications will have to take into account review by the Executive Branch agencies of national security, law enforcement, foreign policy, and trade policy concerns raised in an application.

32. Based on its review of the rules applicable to telecommunications service within the purview of the International Bureau, the staff concludes that the other rules remain in the public interest and do not need to be modified or repealed as a result of meaningful economic competition. As discussed above, the Commission has conducted a number of proceedings in recent years reviewing the rules applicable to international telecommunications services and satellite services, and has made numerous revisions to the rules to keep them current with the state of competition in the international services and satellite markets, and to reduce the burdens placed on carriers and the public. With the exception of the rules cited above, we do not recommend the modification or repeal of any additional rules.

APPENDIX I
RULE PART ANALYSIS

Part 23 – International Fixed Public Radiocommunication Services

Description

Part 23 implements and interprets sections 4, 301, and 303 of the Communications Act of 1934, as amended (Communications Act).[1] Part 23 sets forth rules applicable to high frequency (HF) radio systems used for international communications, including general licensing and service rules, application filing requirements, and technical specifications. The rules classify these systems as either "fixed public service" (a radiocommunication service carried between fixed stations open to public correspondence) or "fixed public press service" (a radiocommunication service carried between point-to-point telegraph stations, open to limited public correspondence of news items or other material related to or intended for publication by press agencies, newspapers, or for public dissemination).

Although Part 23 does not contain lettered sub-parts, the rules are organized as follows:

Section 23.1	Definitions
Sections 23.11-23.12	Use of frequencies
Sections 23.13-23.19	Technical specifications
Sections 23.20-23.27	Use of frequencies
Sections 23.28-23.55	Licensing and service rules

Purpose

The Commission has stated that the original purpose of the Part 23 rules is "obscure."[2] Neither the Federal Communications Commission nor the Federal Radio Commission has issued any opinion explaining the rationale for the rules.[3] Prior to its proposal to modify or repeal Part 23 in 2000,[4] the Commission had not opined on these rules since the *Western Union MO&O* in 1980.

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[1] 47 U.S.C. §§ 154, 301, 303.

[2] *Western Union Telegraph Co.,* Memorandum Opinion and Order, 75 FCC 2d 461, 472 ¶ 39 (1980) (*Western Union MO&O*).

[3] *See id.*

[4] *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, IB Docket No. 00-248, Notice of Proposed Rulemaking, 15 FCC Rcd 25128, 25145 ¶¶ 48-49 (2000) (*Part 25 Earth Station Streamlining NPRM*).

In the *Western Union MO&O*, the Commission stated that the rules contained in Part 23 derive from those promulgated by the Federal Radio Commission in 1932. At that time, fixed wireless links presumably provided an important method of communications between: (1) the contiguous 48 States (including D.C.) and Alaska, Hawaii, any U.S. possession, or any foreign point; (2) Alaska and any other point; (3) Hawaii and any other point; and (4) any U.S. possession and any other point. Part 23 provides the regulatory framework for these services. In addition, Part 23 governs radiocommunication within the contiguous 48 States (including D.C.) in connection with relaying the above-referenced international traffic.

Analysis

Status of Competition

Use of HF radio facilities in providing carriers' international communications services in the age of submarine cable and satellites is virtually dormant. There were three Part 23 licensees in 2000. Since that time, two have surrendered or lost their licenses.[5] Competition among services under this rule Part is therefore not relevant.

Advantages

Part 23 provides the requisite framework within which licensees can perform useful functions in the provision of international communications services. HF radio stations can be a functionally useful supplement to submarine cable and satellite systems in the provision of service to overseas points not easily or economically reached by these facilities, in the provision of a limited restoration capability during submarine cable or satellite outages, and in the provision of certain specialized services such as press and weather map broadcast services.

Disadvantages

Because the type of international traffic addressed in these rules now is carried primarily by undersea cable and satellite, there is considerably less need for regulation in this area.

Recent Efforts

As part of the 2000 biennial review process, the Commission initiated an in-depth review of Part 23, together with its review of Part 25, in which the Commission suggested that it might revise or possibly eliminate Part 23.[6] Because the Commission did not receive any

[5] The Commission noted that Interisland has stopped providing IFPRS. *See* Elimination of Part 23 of the Commission's Rules, *Notice of Proposed Rulemaking*, IB Docket No. 05-216, 20 FCC Rcd 11416, 11420 ¶ 8 (2005) (*Part 23 Notice*). AT&T has surrendered its license. *See* Letter from Martha Lewis Marcus, Senior Attorney, AT&T Corp., to Secretary, FCC (dated Aug. 31, 2005) (*AT&T Letter*).

[6] *Part 25 Earth Station Streamlining NPRM*, 15 FCC Rcd at 25145 ¶ 48.

comments in response to its proposal, it terminated its original review of Part 23, and started a new proceeding to consider elimination of Part 23 and regulation of IFPRS together with domestic point-to-point microwave services in Part 101.[7] That proceeding is still pending.

Comments

There were no comments were filed on the Part 23 rules.

Recommendation

The Commission has concluded that in its current form Part 23 may no longer be necessary in the public interest and accordingly is considering repeal or modification of the rules as part of the *Part 23 Notice*.[8] Staff recommends that, in the context of those proceedings, the Commission consider whether the Part 23 rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest.

[7] *Part 23 Notice*, 20 FCC Rcd 11416.

[8] *Part 23 Notice*, 20 FCC Rcd 11416.

Part 25 – Satellite Communications

Description

Part 25 was adopted pursuant to the authority contained in section 201(c)(11) of the Communications Satellite Act of 1962, as amended, section 501(c)(6) of the International Maritime Satellite Telecommunications Act, and Titles I through III of the Communications Act of 1934, as amended. Part 25 sets out the rules applicable to satellite communications, including general licensing and application filing requirements, technical standards, and technical operations.

Part 25 is organized into seven lettered subparts, with three subparts reserved, and one subpart containing a number of subsections:

A – General
B – Applications and Licenses –
General Application Filing Requirements;
Earth Stations;
Space Stations; and
Forfeiture, Termination, and Reinstatement of Station Authorization
C – Technical Standards
D – Technical Operations
E – Reserved
F – Competitive Bidding Procedures for DARS
G – Reserved
H – Reserved
I – Equal Employment Opportunities
J – Public Interest Obligations

Purpose

Part 25 provides rules under which the International Bureau licenses systems to provide various satellite services. The rules are designed to accommodate efficiently the maximum number of systems possible for each type of service, to enhance competition for satellite services and the terrestrial services with which they compete, and to minimize delay in license-application processing. Sections of Part 25 also have provisions: (1) to protect against impermissible levels of interference; (2) to assure compliance with international agreements and treaties; (3) to assure the timely construction and operation of authorized earth stations and the timely construction, launch and operation of authorized space stations; (4) to assure the timely provision of sufficient information to allow for processing of applications; and (5) to assure compliance with license specifications and conditions as well as with Commission rules and regulations. Part 25 also provides for preemption of local zoning regulation of earth stations, unless the reasonableness of the regulation can be demonstrated.

Analysis

Status of Competition

The satellite services regulated by Part 25 are competitive on most routes. Several major satellite service providers and a number of smaller providers are licensed to provide state-of-the-art satellite telephony and data services to U.S. consumers and consumers worldwide. On many routes, satellite telephony and data services are offered by multiple satellite providers. In addition, these satellite service providers face competition from terrestrial service providers for some services on some routes. The Commission's rules and policies have fostered the competitive industry that we see today by encouraging satellite companies to "pack" the satellite orbits and maximize the use of frequencies available at those orbital locations. Part 25 rules provide licensing mechanisms for future entry and further competition in these services. The rules also allow service to be provided in the United States via foreign-owned and/or foreign-licensed satellites.

Advantages

Subpart B – Applications and Licenses - General Application Filing Requirements: Part 25 provides clear procedures for filing applications and predictable procedures for evaluating whether applications are complete. Part 25 also provides clear and predictable procedures for amendments, modifications, assignments and transfers.

Subpart B – Applications and Licenses - Earth Stations: Sections 25.130 through 25.139 include procedures that allow for frequency coordination analysis to reduce interference and the verification of earth station antenna performance standards. These clear procedures minimize the cost associated with reducing interference. Provisions in Part 25 also assure compliance with international agreements and treaties. Section 25.133 includes requirements for the timely construction and operation of earth stations. By reducing the likelihood that resources will be allocated to "phantom" ventures, section 25.133 assures that unnecessary costs are not imposed on other services that would have been limited by the need for coordination to reduce interference with systems that are, in fact, not implemented.

Subpart B – Applications and Licenses - Space Stations: Section 25.140 provides for the general qualifications required of fixed-satellite space station licensees including procedures to facilitate coordination to avoid harmful interference. Sections 25.142 through 25.149 provide licensing procedures for particular services or classes of satellites.

Subpart B -- Applications and Licenses - Processing of Applications and Forfeiture, Termination, and Reinstatement of Station Authorizations: Sections 25.150 through 25.163 include well-defined procedures for processing applications to determine whether the applications are mutually exclusive. Sections 25.157 and 25.158 prescribe space station licensing procedures that minimize processing delay and obviate comparative evaluation of mutually exclusive applications. Section 25.159 provides a limit on pending applications and unbuilt satellite systems. Sections 25.160, 25.161, and 25.163

specify the circumstances in which licenses may be automatically cancelled or reinstated and in which forfeitures may be assessed. Section 25.165 requires most space-station applicants to post bonds that are subject to forfeiture in the event the license fails to meet implementation milestones. This increases the likelihood that authorized systems will be promptly constructed, launched, and operated. This requirement deters frivolous application-filing and reduces the likelihood that unnecessary coordination costs will be imposed on existing licensees.

Subpart C—Technical Standards and Subpart D—Technical Operations: These subparts provide clear and predictable technical standards and operating rules to minimize interference. Although the Bureau's 2004 Biennial Review Report suggested that these rules might have a tendency to limit the introduction of new services, that tendency has been reduced substantially by the Commission's adoption of streamlined procedures for non-routine earth station applications in 2005.

Subpart F—Competitive Bidding Procedures for DARS: This subpart states that licenses for satellite DARS service shall be awarded pursuant to a competitive bidding mechanism. Competitive bidding promotes competition and awards DARS licenses to those firms that will most efficiently use those resources to compete in providing service.

Subpart I—Equal Employment Opportunities: This section promotes diversity in employment and creates opportunities.

Subpart J—Public Interest Obligations: This subpart imposes public interest obligations on DBS providers, as required by the Cable Act of 1992, 47 U.S.C. § 335, and sections 312 and 315 of the Communications Act.[1]

Disadvantages

Subparts B, C, and D: While the Commission has adopted several new provisions in recent years to streamline and update the procedures for reviewing satellite and earth station applications, there are some rules that have become outmoded over the years, and may no longer be necessary in the public interest. As discussed below, Part 25 includes several provisions that are no longer needed, and so licensees in certain circumstances need more time to find the relevant provisions in Part 25 and to determine what is required of them.

Subpart I—Equal Employment Opportunities: Rules in this section might increase operating costs.

Subpart J—Public Interest Obligations: Rules in this section might increase operating costs.

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[1] *Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations*, Report and Order, 13 FCC Rcd 23254 (1998); *Policies and Rules for the Direct Broadcast Satellite Service,* IB Docket No. 98-21, Report and Order, 17 FCC Rcd 11331, 11344-45 ¶¶ 22-24 (2002) (*Part 100 Order*).

Recent Efforts

In the *2004 Biennial Review Report*, the Bureau discussed a number of provisions in detail that have made it possible to issue satellite licenses more quickly.[2] In particular, in the *First Space Station Reform Report and Order*, the Commission established two different streamlined procedures for licensing satellites.[3] The Commission also extended the satellite license term from 10 to 15 years,[4] eliminated rules that prohibited sale of space station licenses for profit prior to commencement of service with the authorized satellites,[5] and established a streamlined "fleet management" licensing procedure to facilitate certain satellite license modifications.[6]

More recently, in 2006, the Commission started two rulemaking proceedings to consider rule revisions that, if adopted, would increase competition in the market for Direct-to-Home (DTH) satellite services. On June 23, 2006, the Commission released an NPRM seeking comment on service rules for Broadcast Satellite Service (BSS) in the 17 GHz band.[7] On August 18, 2006, the Commission released an NPRM seeking comment on revisions to service rules for that would allow new Direct Broadcast Satellite (DBS) space stations to be deployed and operated in between the DBS satellites currently in operation.[8] These proceedings are still pending.

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[2] *Federal Communications Commission, 2004 Biennial Review*, International Bureau Staff Report, IB Docket No. 04-177, 20 FCC Rcd 343 (2005).

[3] *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34 and -02-54, First Report and Order and Further Notice of Proposed Rulemaking and First Report and Order, 18 FCC Rcd 10760 (2003) (*First Space Station Reform Report and Order*).

[4] *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docket Nos. 02-34 and 00-248, Notice of Proposed Rulemaking and First Report and Order, 17 FCC Rcd 3847, 3894-96 ¶¶ 139-43 (2002) (*Space Station Reform NPRM*).

[5] *First Space Station Reform Report and Order,* 18 FCC Rcd at 10832 ¶ 215.

[6] *Amendment of the Commission's Space Station Licensing Rules and Policies*, IB Docke Nos. 02-34 and 00-248, Second Report and Order, 18 FCC Rcd 12507 (2003) (*Second Space Station Reform Report and Order*).

[7] *The Establishment of Policies and Service Rules for the Broadcasting-Satellite Service at the 17.3-17.7 GHz Frequency Band and at the 17.7-17.8 GHz Frequency Band Internationally, and at the 24.75-25.25 GHz Frequency Band for Fixed Satellite Services Providing Feeder Links to the Broadcasting-Satellite Service and for the Satellite Services Operating Bi-directionally in the 17.3-17.8 GHz Frequency Band*, Notice of Proposed Rulemaking, IB Docket No. 06-123, 21 FCC Rcd 7426 (2006). BSS is the international term used for a radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public. *See, e.g.,* 47 C.F.R. § 2.1. In this item, the term "17 GHz band" generally refers to the space-to-Earth (downlink) frequencies at 17.3-17.7 GHz and the corresponding Earth-to-space (uplink) frequencies at 24.75-25.25 GHz.

[8] *Amendment of the Commission's Policies and Rules for Processing Applications in the Direct Broadcast Satellite Service, Feasibility of Reduced Orbital Spacing for Provision of Direct Broadcast Satellite Service in the United States*, Notice of Proposed Rulemaking, IB Docket No. 06-160, 21 FCC Rcd 9443 (2006).

The Commission has also focused more on its earth station procedures since the *2004 Biennial Review Report*. In the *Part 25 Earth Station Streamlining Fifth Report and Order*,[9] the Commission adopted procedures to streamline processing for two types of non-routine earth station applications: (1) those seeking authority to operate an earth station with an antenna diameter too small to meet the routine processing standards of Part 25;[10] and (2) those seeking authority to operate an earth station at a power level greater than those specified in Part 25.[11] For applications seeking authority to use a small antenna, the Commission proposed two alternative procedures. One procedure would allow the Commission to require the applicant proposing a small antenna to operate at a lower power level to compensate for the smaller antenna diameter.[12] The second procedure, as proposed by the Commission in the *Notice*, would allow applicants to submit certifications from target satellite operators, verifying that the operation of the small earth station antenna has been coordinated with other satellite operators potentially affected by the proposed non-routine earth station.[13] For applications to operate at non-routine power levels, the Commission proposed only one option, a certification procedure substantially similar to that it proposed for applications for earth stations with non-routine antenna diameters.[14] Finally, the Commission codified these procedures in Section 25.220 of its rules.[15]

The Commission also adopted several other earth station streamlining measures. In particular, it established a 15-year license term for earth station licenses,[16] and eliminated

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[9] 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations, *Fifth Report and Order*, IB Docket No. 00-248, 20 FCC Rcd 5666 (2005) (*Part 25 Earth Station Streamlining Fifth Report and Order*).

[10] The smallest diameter antenna routinely licensed at C-band is 4.5 meters, and the smallest antenna routinely licensed at Ku-band is 1.2 meters in diameter. *See Part 25 Earth Station Streamlining Fifth Report and Order*, 20 FCC Rcd at 5676 ¶ 20. The size of the earth station antenna is important since, in general, smaller antennas produce wider transmission beams, which, in turn, can create more potential interference to adjacent satellite operations.

[11] *See* 47 C.F.R. §§ 25.134 (VSAT networks), 25.211 (video transmissions), 25.212 (narrowband transmissions). *See also Part 25 Earth Station Streamlining Fifth Report and Order*, 20 FCC Rcd at 5676 ¶ 20.

[12] Reducing the diameter of an earth station antenna increases the side lobes. Reducing the transmit power of the earth station reduces the off-axis EIRP, however, and so can compensate for the reduction in antenna diameter. *See Part 25 Earth Station Streamlining Fifth Report and Order*, 20 FCC Rcd at 5676 ¶ 20.

[13] *Part 25 Earth Station Streamlining Fifth Report and Order*, 20 FCC Rcd at 5676 ¶ 20.

[14] *Part 25 Earth Station Streamlining Fifth Report and Order*, 20 FCC Rcd at 5676 ¶ 20.

[15] *Part 25 Earth Station Streamlining Fifth Report and Order*, 20 FCC Rcd at 5676 ¶ 20.

[16] *Amendment of the Commission's Space Station Licensing Rules and Policies, 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Notice of Proposed

the licensing requirement for receive-only earth stations receiving transmissions from non-U.S.-licensed satellites on the Permitted List.[17] The Commission has also adopted a streamlined form for routine earth station applications, called Form 312 EZ, eliminated several outdated rules, and mandated electronic filing for all earth station filings.[18] Finally, the Commission decided to increase the starting point for the antenna gain pattern envelope in the *Part 25 Earth Station Streamlining Sixth Report and Order*, from 1.0° in the C-band and 1.25° in the Ku-band to 1.5° in both bands.[19] The Commission stayed the effectiveness of its antenna gain pattern revisions, however, while it considered a proposal for an off-axis EIRP approach for FSS earth stations, set forth in the *Part 25 Earth Station Streamlining Third Further Notice*, which was adopted together with the *Part 25 Earth Station Streamlining Sixth Report and Order*.[20] The *Part 25 Earth Station Streamlining Third Further Notice* is still pending.

Comments

Two parties, SIA and the Navajo Commission, filed comments, and no one filed replies. SIA makes a number of extensive recommendations. First, SIA observes that C-band and Ku-band earth station operators have more flexibility than Ka-band earth station operators because they can obtain ALSAT earth station licenses, rather than listing satellites individually as points of communication.[21] SIA notes that, in the past, the

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Rulemaking and First Report and Order, IB Docket Nos. 02-34 and 00-248, 17 FCC Rcd 3847, 3894-96 ¶¶ 139-46 (2002) (*Part 25 Earth Station Streamlining First Report and Order*).

[17] *Amendment of the Commission's Space Station Licensing Rules and Policies, 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Second Report and Order, IB Docket Nos. 02-34 and 00-248, 18 FCC Rcd 12507 (2003) (*Part 25 Earth Station Streamlining Second Report and Order*). For more on the Permitted List, see *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, Order, IB Docket No. 96-111, 15 FCC Rcd 7207 (1999) (*DISCO II First Reconsideration Order*).

[18] *Amendment of the Commission's Space Station Licensing Rules and Policies, 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Third Report and Order and Second Further Notice of Proposed Rulemaking, IB Docket Nos. 02-34 and 00-248, 18 FCC Rcd 13486 (2003) (*Part 25 Earth Station Streamlining Third Report and Order*); *Amendment of the Commission's Space Station Licensing Rules and Policies, 2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Fourth Report and Order, IB Docket Nos. 02-34 and 00-248, 19 FCC Rcd 7419 (2004) (*Part 25 Earth Station Streamlining Fourth Report and Order*).

[19] *2000 Biennial Regulatory Review -- Streamlining and Other Revisions of Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Earth Stations and Space Stations*, Sixth Report and Order and Third Further Notice of Proposed Rulemaking, IB Docket No. 00-248, 20 FCC Rcd 5593, 5604-06 ¶¶ 22-25 (2005) (*Part 25 Earth Station Streamlining Sixth Report and Order*).

[20] *Part 25 Earth Station Streamlining Sixth Report and Order*, 20 FCC Rcd at 5614 ¶ 50.

[21] SIA Comments at 3-6.

Commission has limited the ALSAT designation to C-band and Ku-band earth stations because, unlike other frequency bands, those bands have well-established operating environments in which it is possible to maintain acceptable levels of interference.[22] SIA argues that, subsequent to the time the Commission reached that conclusion, a "well-established operating environment" has also developed for the Ka-band, and recommends extending ALSAT treatment to Ka-band earth stations.[23] SIA notes that footnote US334 to the Table of Frequency Allocations requires Ka-band satellite operators to coordinate their operations with government users, but argues that footnote US334 does not affect Ka-band earth station operators and should not preclude extending ALSAT treatment to Ka-band earth stations.[24]

Second, SIA proposes creating an "ALSAT-like" designation for DBS feeder link earth stations. SIA recognizes that there are no feeder link rules comparable to the two-degree spacing rules for FSS earth stations, and that the current nine-degree spacing for DBS satellites is subject to a rulemaking.[25] Nevertheless, SIA suggests that an "ALSAT-like" designation for DBS feeder link earth stations would be appropriate because those earth stations generally have very large diameter antennas with very sharply focused beams.[26] SIA claims that this is necessary to resolve a conflict between the current DBS feeder link earth station requirements and the Commission's DBS fleet management rules.[27]

Third, SIA maintains that the antenna gain pattern testing requirements for Ka-band earth stations are more rigorous than those for earth stations in other frequency bands.[28] SIA further asserts that these requirements are onerous and unnecessary for large, individually licensed Ka-band earth station antennas, and so the testing requirements should be limited to blanket-licensed "production" antennas in the Ka-band.[29]

Fourth, SIA proposes expanding the kinds of earth station modifications that can be treated as minor under Section 25.118(a) of the Commission's rules. Specifically, SIA recommends allowing increases in power or bandwidth, and the addition of emission designators, to be treated as minor modifications, as long as the new parameters are within the authorized power envelopes applicable to the existing licensed antenna.[30] SIA

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22 SIA Comments at 6-7, *citing DISCO II Reconsideration Order*, 15 FCC Rcd at 7210-11 n.19.

23 SIA Comments at 7-8.

24 SIA Comments at 8 n.14.

25 SIA Comments at 8-9.

26 SIA Comments at 9-10.

27 SIA Comments at 8-9.

28 SIA Comments at 10-11.

29 SIA Comments at 11-14.

30 SIA Comments at 14.

further proposes allowing changes in coordinates for hub earth stations on 30 days' notice, but would require evidence of frequency coordination at the time of its notification in bands that are shared with terrestrial systems.[31] SIA would also permit the addition of new routine antennas, and new non-routine antennas on the list of approved non-routine antennas.[32] SIA contends that treating these types of modifications as minor modifications would decrease regulatory burdens for both the Commission and for earth station licensees, without increasing the risk of harmful interference.[33] Alternatively, SIA suggests creating a procedure for these modification requests, in which the requests would become effective automatically after 14 days, unless the Commission releases a public notice identifying the request as a major modification.[34]

Finally, SIA makes a number of additional miscellaneous recommendations. For example, SIA claims that the Bureau often dismisses earth station applications for minor errors or omissions.[35] According to SIA, the Bureau would save staff resources by working with earth station applicants through e-mail to perfect their applications, or by sending the applicants letters outlining errors or omissions and allowing 30 days to respond, rather than dismissing defective applications.[36] SIA also notes that the Commission's rules provide for electronic filing for oppositions and comments to satellite and earth station applications, and recommends making the revisions to IBFS needed to implement those electronic filing provisions.[37] In addition, SIA recommends revising the rules governing special temporary authority (STAs) so that customer needs can be considered a public interest factor supporting grant of STA requests.[38]

In contrast to SIA, the Navajo Commission makes only one comment with respect to the Commission's Part 25 rules.[39] The Navajo Commission's recommendation in its entirety is as follows: "Providers of satellite services (television, internet, telephone) should be required to get prior approval from tribal entity as a condition of licensing."[40] The

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31 SIA Comments at 14-15.

32 SIA Comments at 15.

33 SIA Comments at 15.

34 SIA Comments at 15-16.

35 SIA Comments at 16.

36 SIA Comments at 16-17.

37 SIA Comments at 17-19.

38 SIA Comments at 19-20.

39 The Navajo Commission makes several recommendations for revisions of rules administered by other Bureaus, however.

40 Navajo Commission Comments at para. 17.

Navajo Commission asserts generally that all its suggestions are intended to foster competition in Navajo Tribal Lands.[41]

Recommendations

In 2003 and 2004, the Commission reviewed and amended the space station licensing rules. In the *2004 Biennial Review Report*, the Bureau found that the new licensing procedures were appropriate for the current state of competition, for the reasons set forth in the *Space Station Reform Orders*.[42] We do not know of anything in the past two years that would provide cause for revisiting that conclusion. Accordingly, the staff concludes that the space station licensing rules in Part 25, Subpart B adopted in the *Space Station Reform Orders* remain necessary in the public interest, and recommends that repeal or modification is not warranted.

More recently, in 2005, the Commission adopted a number of revisions to its earth station licensing procedures, pursuant to proposals made in the *2000 Biennial Review Report*. With those revisions, we find that the earth station licensing procedures are now appropriate for the current state of competition. Accordingly, the staff does not find that the current earth station licensing rules in Part 25, Subparts B and C, are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that repeal or modification is not warranted, with the possible exception of the additional rule revisions proposed in the *Part 25 Earth Station Streamlining Third Further Notice*.[43]

However, although the rules for reviewing and processing space station and earth station applications were recently adopted and remain in the public interest, there are a number of other provisions in Part 25 that may warrant repeal or modification, independent of whether there has been any meaningful economic competition. For example, while the Commission eliminated some outdated Part 25 rules in 2003, the rules eliminated were in large part made obsolete by the adoption of the ORBIT Act in 2000, and the subsequent privatization of Intelsat and Inmarsat.[44] There remain a number of other outdated provisions in Part 25, including provisions that have become or are starting to become

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41 Navajo Commission Comments at Introduction.

42 *See First Space Station Reform Report and Order*, 18 FCC Rcd 10760*; Second Space Station Reform Report and Order* , 18 FCC Rcd 12507; *Third Space Station Reform Report and Order,* 18 FCC Rcd 13486; and *Fourth Space Station Reform Report and Order*, 19 FCC Rcd 7419.

43 *Part 25 Earth Station Streamlining Sixth Report and Order*, 20 FCC Rcd at 5614 ¶ 50.

44 *See Part 25 Earth Station Streamlining Third Report and Order*, 18 FCC Rcd at 13503-04 ¶ 50; *citing* 47 C.F.R. Part 25, Subpart H; Section 645(1) of the Satellite Act of 1962, as amended by the ORBIT Act, 47 U.S.C. § 765d(1). Congress amended the Satellite Communications Act of 1962, 47 U.S.C. §§ 701 *et seq*. (Satellite Act) by adopting the Open-Market Reorganization for the Betterment of International Telecommunications Act, Pub. L. No. 106-180, 114 Stat. 48 (2000), *codified at* 47 U.S.C. § 761 *et seq*. (ORBIT Act). The ORBIT Act adds Title VI to the Satellite Act, entitled "Communications Competition and Privatization."

outdated subsequent to the adoption of the ORBIT Act. For example, many of the provisions in Section 25.210 were designed to prevent harmful interference from or to analog transmissions.[45] Accordingly, we recommend that the Commission undertake a more thorough review of Part 25 to determine whether these rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest. Such a review would also provide an opportunity to simplify the rules and make them more readable.

In addition, we find that many of SIA's suggestions warrant further consideration. In particular, we agree with SIA that, as the result of the development of meaningful economic competition among Ka-band earth station operators, some of the Commission's rules governing Ka-band earth stations may no longer be necessary in the public interest. Accordingly, pursuant to Section 11 of the Communications Act,[46] we recommend starting a proceeding to consider SIA's two proposals for streamlining review of Ka-band earth station applications. We also find that a number of SIA's proposals merit further consideration, independent of our review of Part 25 pursuant to Section 11 of the Communications Act.[47] First, in addition to reviewing the testing requirements for some Ka-band earth station antennas, as SIA suggests, werecommend reviewing all the earth station testing requirements in Part 25, Subpart B. Second, we agree with SIA that we may be able to extend minor modification treatment to more kinds of earth station modification applications, as SIA recommends, without increasing the risk of harmful interference. Third, we also find that the time may be ripe for an in-depth review of the Commission's rules and policies regarding STAs for operation of space stations and earth stations, particularly with respect to the issue raised by SIA, regarding factors constituting public interest for an STA.

We recommend that the Commission start rulemaking proceedings to consider implementing all of SIA's proposals,[48] except for its proposal to devote staff time to working with the applicant to perfect its application rather than simply dismissing incomplete applications. First, we disagree with SIA's characterization that we dismiss applications for minor errors or omissions.[49] The earth station applications that we dismiss include significant errors or omissions that cause the application to be substantially incomplete. Second, we find that SIA is mistaken in assuming that helping applicants to perfect their applications would be less burdensome for Bureau staff than drafting dismissal letters.[50] This is not consistent with the Bureau's experience. We have

45 47 C.F.R. §§ 25.210(a)(1), (a)(3), (c), (i).

46 47 U.S.C. § 161.

47 47 U.S.C. §161.

48 It is not necessary to conduct a rulemaking to consider SIA's proposal to upgrade IBFS to allow electronic filing of oppositions and replies. *See* SIA Comments at 17-19. We will make this upgrade as quickly as possible, consistent with plans to make other needed upgrades to IBFS.

49 SIA Comments at 16.

50 SIA Comments at 16-17.

found that, by not investing staff resources into perfecting defective applications, we can devote more resources into reviewing other applications. As a result, we have been able to increase the number of applications that we review and grant each year.

Finally, we do not recommend at this time extending any additional authority to Native American Tribal Governments to authorize the provision of satellite services within Tribal lands, beyond the authority they have now. As an initial matter, Tribal Authorities are always free to file comments or oppositions to individual satellite and earth station applications.[51] Moreover, we note that Tribal Authorities already have opportunities to voice their concerns in the satellite and earth station license review processes. In 1999, the Commission started a rulemaking proceeding to explore methods for promoting provision of telecommunications services on Tribal Lands.[52] In 2000, the Commission concluded that it could best promote satellite telecommunications services by considering waivers of the satellite and earth station technical rules on a case-by-case basis, with the approval of the Tribal Authority.[53] The Navajo Commission's one-sentence request for satellite licensing authority does not provide a basis for revisiting the Commission's conclusion in that proceeding. [54]

[51] *See* 47 U.S.C. § 309.

[52] *Extending Wireless Telecommunications Services To Tribal Lands*, Notice of Proposed Rulemaking, WT Docket No. 99-266, 14 FCC Rcd 13679 (1999).

[53] *Extending Wireless Telecommunications Services To Tribal Lands*, Report and Order, WT Docket No. 99-266, 15 FCC Rcd 11794 (2000).

[54] The issues raised by the Navajo Commission are better suited to a rulemaking petition, which they are free to file. Accordingly, we do not address those issues here.

Part 43, Section 43.51 – Contracts and concessions

Description

Section 211 of the Communications Act requires carriers to file with the Commission copies of all contracts, agreements, or arrangements with other carriers that relate to any traffic affected by the Communications Act.[55] Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.[56]

Section 43.51 of the Commission's rules implements these sections by establishing rules regarding contracts and concessions entered into by carriers. First, section 43.51 requires that certain carriers file with the Commission copies of specified contracts, agreements and arrangements with other carriers. Second, section 43.51 sets forth the filing requirements associated with the Commission's International Settlements Policy (ISP), which is designed to ensure that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries that are not compliant with the Commission's Benchmarks Policy.

Purpose

The contract-filing requirement helps the Commission to identify potential instances of anti-competitive conduct, and to enforce its International Settlements Policy where application of ISP remedies is necessary to respond to anticompetitive conduct.

Analysis

Status of Competition

Competition in U.S.-international telecommunications services is generally increasing, and as a result, the average price of a U.S. international call is falling, and getting closer to the cost of providing service. On the destination side of a U.S. international call, many markets are becoming liberalized, with new entrants vying with incumbents to terminate U.S. traffic. The former national monopoly providers, however, continue to be substantial players in the market. In some instances carriers or regulators have sought to raise international telecommunications prices or prevent prices from declining, in order to support a variety of social goals other than encouraging competition or bringing prices more in line with costs.

[55] 47 U.S.C. § 211. Section 211 also permits the Commission to require the filing of any other contracts.

[56] 47 U.S.C. § 220.

Advantages

The contract filing requirement assists the Commission to identify and remedy potential instances of anti-competitive conduct.

Disadvantages

The contract filing requirement may necessitate the filing of competitively sensitive information, although it may be filed confidentially.

Recent Efforts

As part of the *International Detariffing Order,* the Commission amended section 43.51 to clarify that the contract filing requirements apply solely to: (1) carriers classified as dominant for reasons other than foreign affiliation; and (2) carriers, whether classified as dominant or non-dominant, contracting directly for services with foreign carriers that possess market power.[57] In the *2004 International Settlements Policy Reform Order*, the Commission modified the contract filing requirements with respect to non-ISP routes.[58]

Comments

There were no comments filed on section 43.51.

Recommendation

The Commission reviewed and amended the general contract filing requirements, and for the reasons set forth in the *International Detariffing Order,* [59] they are appropriate for the current state of competition in international services. The Commission recently reviewed and amended the contract filing requirements associated with the ISP, and for the reasons set forth in the *2004 International Settlements Policy Reform Order,* [60] they are appropriate for the current state of competition in international services. Accordingly, the staff does not find that the contract filing requirements in section 43.51 are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such [telecommunications] service." Staff therefore recommends that repeal or modification is not warranted.

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[57] *2000 Biennial Regulatory Review: Policy and Rules Concerning the International, Interexchange Marketplace*, IB Docket No. 00-202, Report and Order, 16 FCC Rcd 10647 (2001) (*International Detariffing Order*).

[58] *2004 International Settlements Policy Reform, International Settlement Rates Order*, IB Docket 02-324, First Report and Order, 19 FCC Rcd 5709, ¶ 43 (2004) *(2004 ISP Reform Order*).

[59] *International Detariffing Order*, 16 FCC Rcd 10647.

[60] *2004 International Settlements Policy Reform Order*, 19 FCC Rcd 5709.

Part 43, Sections 43.53, 43.61, 43.82 – Reports of Communications Common Carriers and Certain Affiliates

Description

Section 219 of the Communications Act authorizes the Commission to require all carriers that are subject to the Act to file annual reports with the Commission.[61] Section 220 allows the Commission to prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers.[62]

Part 43 prescribes general requirements and filing procedures for several reports that various carriers are required to file. These include reports on the division of international telegraph toll communication charges,[63] international telecommunications traffic,[64] and international circuit status reports.[65]

Purpose

The reports required by Part 43 assist the Commission in monitoring the industry to ensure that carriers comply with the Commission's rules, and in tracking market and other industry developments, which improves the Commission's ability to identify developing regulatory issues and analyze the effects of alternative policy choices. The reports also assist the public in monitoring trends in the international services market.

Analysis

Status of Competition

Competition in U.S.-international telecommunications services is generally increasing, and as a result, the average price of a U.S. international call is falling, and getting closer to the cost of providing service. On the destination side of a U.S. international call, many markets are becoming liberalized, with new entrants vying with incumbents to terminate U.S. traffic. The former national monopoly providers, however, continue to be substantial players in the market. In some instances carriers or regulators have sought to raise international telecommunications prices or prevent prices from declining, in order to

[61] 47 U.S.C. § 219.

[62] 47 U.S.C. § 220.

[63] 47 C.F.R. § 43.53.

[64] 47 C.F.R. § 43.61.

[65] 47 C.F.R. § 43.82.

support a variety of social goals other than encouraging competition or bringing prices more in line with costs.

Advantages

The reports required by Part 43 increase the Commission's ability to ensure compliance with its rules. They also provide the Commission, other government agencies, state regulators, industry, and the public with valuable information on market and other industry trends and developments. This information is helpful to the Commission in identifying developing regulatory issues, monitoring compliance with existing rules and policies, and evaluating the effects of policy choices.

Disadvantages

Part 43 may require the filing of some information that is unnecessarily detailed or unnecessary in light of competitive developments. At the same time, the rules may not include the collection of information necessary to monitor effectively and safeguard the provision of international telecommunications facilities and services in the current market.

Recent Efforts

In the *International 2000 Biennial Review Order*, the Commission found that it was no longer in the public interest to require Commercial Mobile Radio Service (CMRS) carriers providing resale of international switched services to file quarterly traffic and revenue reports for their service to markets where they are affiliated with a foreign carrier with market power that collects settlement payments from U.S. carriers.[66] The Commission consequently amended section 43.61 to exempt CMRS carriers from quarterly filing requirements in section 43.61(c).

In addition, the Commission eliminated an outdated regulation in section 43.81 that had required certain foreign-owned carriers to file with the Commission annual revenue and traffic reports for all common carrier telecommunication services they offer in the United States.[67]

In the *International Reporting Requirements NPRM,*[68] the Commission initiated a comprehensive review of the reporting requirements to which carriers providing U.S.

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66 *International 2000 Biennial Review Order*, 17 FCC Rcd 11416.

67 *Id.*

68 *See Reporting Requirements for U.S. Providers of International Telecommunications Services*, IB Docket 04-112, Notice of Proposed Rulemaking, 19 FCC Rcd. 4231 (2004) (*International Reporting Requirements NPRM*).

international services are subject under Part 43 of the Commission's rules.[69] Specifically, the Commission sought comment on whether to: retain the annual traffic status reporting requirements; eliminate the requirement that carriers report the number of messages they carry during the year; eliminate the requirement to file traffic and revenue reports, and circuit-status reports for traffic between the continental United States and U.S. off-shore points or between off-shore U.S. points; establish a revenue threshold for a carrier to file annual traffic and revenue reports for pure resale services; establish a revenue threshold for which miscellaneous services a carrier must report; change the filing dates for the circuit-status, traffic and revenue reports; and simplify and improve the reporting requirements as recommended by the staff of the International Bureau and the Wireline Competition Bureau. The Commission also sought comment on whether to retain the quarterly traffic and revenue reporting requirements placed on large carriers (section 43.61(b))[70] and on foreign-affiliated carriers (section 43.61(c)).[71] The Commission proposed to repeal section 43.53, which requires U.S. carriers to report their contracts with foreign carrier correspondents governing the division of international tolls for telegraph communications.

Comments

There were no comments filed on sections 43.53, 43.61, and 43.82.

Recommendation

The Commission has concluded that in their current form the reporting requirements for international services contained in Part 43 may no longer be necessary in the public interest and accordingly has initiated a proceeding to consider whether to modify those requirements.[72] Staff recommends that, in the context of those proceedings, the Commission consider whether these rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest.

69 47 C.F.R. Part 43 (2003).

70 47 C.F.R. § 43.61(b).

71 47 C.F.R. § 43.61(c).

72 *See International Reporting Requirements NPRM*, 19 FCC Rcd. 4231.

Part 63 – Extension of Lines, New Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status

Description

Section 214 of the Communications Act provides that no carrier shall undertake the construction of a new line or extension of any line, or shall acquire or operate any line, or extension thereof, without first having obtained a certificate from the Commission that the present or future public convenience and necessity requires the construction and/or operation of such extended line. Section 214 also provides that no carrier shall discontinue, reduce or impair service to a community without first having obtained a certificate from the Commission that neither the present nor future public convenience and necessity will be adversely affected by such action.[73] Part 63 of the Commission's rules sets forth standards and specific information that must be included in a section 214 application for market entry or exit by a common carrier.[74]

Purpose

A section 214 application is a request for authority to provide or to discontinue services pursuant to section 214 of the Communications Act. Part 63 sets out the requirements for a section 214 authorization to provide or discontinue service. A carrier must receive a section 214 authorization prior to initiating or discontinuing U.S.-international service.

The primary purpose in adopting entry criteria under section 214 is to provide Commission oversight of U.S.-international communications and permit the Commission to develop policies and enforce its rules in order to protect U.S. consumers and competition. The requirement that all carriers obtain authorization pursuant to section 214 to provide international services enables the Commission to assure satisfaction of basic qualifications of applicants and compliance with rules and policies designed to preserve competition on U.S.-international routes. Importantly, the application process includes consultation with Executive Branch agencies regarding national security, law enforcement, foreign policy and trade concerns unique to the provision of international services to and from the United States. The process allows the Commission to place conditions on the authorizations, impose reporting requirements, monitor foreign affiliations and competition conditions, and otherwise assure compliance with Commission rules and policies and Executive Branch requirements. Finally, the section 214 authorization process itself serves to inform carriers of obligations imposed upon all providers of international service.

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[73] 47 U.S.C. § 214(a).

[74] 47 C.F.R. Part 63.

Part 63 also contains procedures for a party to be designated as a Recognized Private Operating Agency.[75]

Analysis

Status of Competition

Competition in U.S.-international telecommunications services is generally increasing, and as a result, the average price of a U.S. international call is falling, and getting closer to the cost of providing service. On the destination side of a U.S. international call, many markets are becoming liberalized, with new entrants vying with incumbents to terminate U.S. traffic. The former national monopoly providers, however, continue to be substantial players in the market. In some instances carriers or regulators have sought to raise international telecommunications prices or prevent prices from declining, in order to support a variety of social goals other than encouraging competition or bringing prices more in line with costs.

Advantages

The Commission's rules are designed to preserve competition on U.S.-international routes. Part 63 provides carriers and the public with procedures to be followed to obtain authorization to construct facilities, provide service, and discontinue service. The rules clarify what information must be filed with the Commission, how long action on the application typically will take, the types of services that can be provided over the facilities, and in what circumstances a carrier may discontinue service.

Disadvantages

The rules place administrative burdens on the carriers and the Commission. Some of the rules are duplicative or unclear.

Recent Efforts

The Commission has taken several steps to streamline its international 214 application process. In 1996, the Commission created an expedited process for global, facilities-based section 214 applications.[76] The Commission permitted applicants to apply for section 214 authorizations on a global or limited basis, reduced paperwork obligations, streamlined tariff requirements for non-dominant international carriers, and ensured that

[75] 47 C.F.R. §§ 63.701, 63.702.

[76] *See Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996). The Commission initiated the international Section 214 streamlining process in 1985. *See International Competitive Carrier Policies*, Report and Order, 102 FCC 2d 812 (1985); *recon. denied*, 60 RR2d 1435 (1986); *modified*, *Regulation of International Common Carrier Services*, Report and Order, 7 FCC Rcd 7331 (1992).

essential information is readily available to all carriers and users. The new regulations facilitate entry into the U.S.-international telecommunications market and the expansion of international services to the benefit of U.S. consumers and competition.

In the *1999 International Biennial Review Order,* the Commission took additional steps to reduce certain regulatory burdens placed on providers of international telecommunications services in light of market changes.[77] The Commission streamlined its procedures for granting international section 214 authorizations to provide international services, and increased the categories of applications eligible for streamlined processing. After adoption of the rules, the vast majority of international section 214 applicants qualify for streamlined processing, and carriers can then provide service starting on the 15th day after public notice. Carriers already providing service can complete *pro forma* transfers of control and assignments of their authorizations without prior Commission approval. Carriers also can provide service through their wholly-owned subsidiaries without separate Commission approval. Carriers under common control with an already-authorized carrier are generally eligible for streamlined processing. Authorized carriers are able to use any authorized U.S.-licensed or non-U.S.-licensed undersea cable systems to provide their authorized services.

In the *2000 International Biennial Review Order,* the Commission took steps to remove further unnecessary burdens on international carriers.[78] The Commission revised the rules for *pro forma* transfers and assignments of international section 214 authorizations to give carriers greater flexibility in structuring transactions. These changes also assist carriers by making the rules more consistent with those procedures used for other service authorizations, particularly for the Commercial Mobile Radio Service (CMRS). The Commission also clarified the international discontinuance rules and, consistent with domestic service rules, exempted CMRS carriers from the discontinuance requirements. The Commission further narrowed one of the section 214 benchmark conditions, so that it only applies to the provision of U.S.-international facilities-based switched services for facilities-based U.S. carriers affiliated with dominant foreign carriers.

In the *Parts 1 and 63 NPRM*,[79] the Commission requested comment on several potential changes to the international section 214 authorization process[80] and the rules relating to

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77 *See 1998 Biennial Regulatory Review-Review of International Common Carrier Regulations*, IB Docket No. 98-118, Report and Order, 14 FCC Rcd 4909 (1999) (*1998 International Biennial Review Order*).

78 *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of 's Rules*, IB Docket No. 00-231, Report and Order, 17 FCC Rcd 11416 (2002) (*2000 International Biennial Review Order*), *aff'd sub nom. Cellco Partnership d/b/a Verizon Wireless v. FCC & USA*, 357 F.3d 88 (D.C. Cir. 2004).

79 *Amendment of Parts 1 and 63 of the Commission's Rules*, IB Docket 04-47, Notice of Proposed Rulemaking, 19 FCC Rcd 13276 (2004) (*Parts 1 and 63 NPRM*).

80 47 U.S.C. § 214.

the provision of U.S.-international telecommunications services.[81] Specifically, the Commission sought comment on whether to amend the procedures for discontinuing an international service to be more consistent with the procedures for discontinuing a domestic service. The Commission also sought comment on ways to lessen the burdens placed on Commercial Mobile Radio Service (CMRS) carriers by the international section 214 application process. Finally, the Commission sought comment on whether to amend the rules to allow commonly-controlled subsidiaries to use their parent's section 214 authorization to provide international service.

Comments

There were no comments filed on the Part 63 rules.

Recommendation

The Commission has concluded that, in their current form, parts of sections 63.18, 63.19, 63.21, 63.23, and 63.24 may no longer be necessary in the public interest and accordingly adopted the *Parts 1 and 63* NPRM to consider modification of those rules. [82] Staff recommends that, in the context of those proceedings, the Commission consider whether these rules are necessary in the public interest and, if not, to repeal or modify any rule so that it is in the public interest.

In addition, we recommend that the Commission initiate a proceeding to shorten its international section 214 application review process for applications that qualify for streamlined processing under the current rules. We believe that the current 14-day review process is unnecessary.[83] The U.S.-international telecommunications market continues to be increasingly competitive with the addition of new competitors each year. In addition, as part of that proceeding, we recommend that the Commission consolidate, reorganize, and clarify Commission rules and regulations on international facility and service authorizations contained in Part 63 of Title 47. Specifically, other Parts of Title 47, including Parts 1, 43 and 64, contain applicable substantive and procedural rules that, when read with Part 63, provide applicants, whether new or existing, with a complete picture of the licensing, reporting and compliance requirements that apply to international common carriers. Consolidation of these Parts would align all rules applicable to entrance into and provision of international services, reduce confusion among applicants, reduce the amount of time that Commission staff currently spends in discussing applications with applicants, and create a consistent, cohesive and logical approach to applying for and maintaining international authority for operations of facilities and

[81] 47 C.F.R. Part 63.

[82] *Parts 1 and 63 NPRM,* 19 FCC Rcd 13276.

[83] We recognize that any changes to the Commission's processing schedule for international section 214 application will have to take into account review by the Executive Branch agencies of national security, law enforcement, foreign policy, and trade policy concerns raised in an application.

provision of international services. The Commission has addressed specific sections and subsections of Part 63 in recent years, but has not undertaken a comprehensive review of Part 63 beyond that required by section 11. We believe that, for reasons independent of economic competition between telecommunications service providers, the Part 63 rules, in their current version, may no longer be necessary in the public interest. We recommend that the Commission undertake such a comprehensive review.

Part 64, Subpart J – International Settlements Policy and Modification Requests

Description

Subpart J sets forth the Commission's International Settlements Policy (ISP), which is designed to ensure that U.S. telecommunications carriers pay nondiscriminatory rates for termination of international traffic in foreign countries that are not benchmark-compliant. Subpart J also sets forth the information that must be contained in a request to modify an international settlement arrangement and the procedures that govern Commission consideration of such requests.[84] These requirements are based on the Commission's authority pursuant to sections 1, 201, 202, 203, and 309 of the Communications Act.[85]

Purpose

The International Settlements Policy is designed to protect U.S. international carriers and the customers they serve from the potential exercise of market power by dominant foreign carriers to set unilaterally the prices, terms and conditions under which U.S. carriers are able to exchange international traffic.[86] The requirement for filing accounting rate modification requests set out in Subpart J is intended to prevent harm to U.S. consumers resulting from the exercise of market power by foreign carriers. In particular, it assists the Commission in ensuring compliance with the ISP and the Commission's benchmarks and international simple resale policies.[87]

Analysis

Status of Competition

Competition in U.S.-international telecommunications services is generally increasing, and as a result, prices paid for international communications services are generally falling and getting somewhat closer to the costs of providing various services. Many markets are changing from a small number of national telecommunications providers on the foreign-end of the U.S.-international services to a larger number of competitors. The

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84 47 C.F.R. § 64.1001.

85 47 U.S.C. §§ 151, 201, 202, 203 and 309.

86 *See 1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements,* IB Docket No. 98-148, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963, 7974 ¶ 31 (1999).

87 The Commission has established benchmarks that govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States. *See International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997), *aff'd sub nom. Cable and Wireless P.L.C. v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999).

former national monopoly providers, however, continue to be substantial players in the market. In some instances, carriers or regulators have sought to raise international telecommunications prices or prevent prices from declining, in order to support a variety of social goals other than encouraging competition or bringing prices more in line with costs.

Advantages

Subpart J is designed to prevent the exercise of market power by foreign carriers, and to facilitate the negotiation of lower accounting rates by U.S. international carriers to the benefit of American consumers.

Disadvantages

The ISP and its accounting rate policies may not adequately protect U.S. carriers and their customers from increasingly high foreign mobile termination rates.

Recent Efforts

In the *1999 ISP Reform Order,* the Commission made several changes to the ISP, deregulating inter-carrier settlement arrangements between U.S. carriers and foreign non-dominant carriers on competitive routes.[88] The Commission, among other things, eliminated the ISP and contract filing requirements for arrangements with foreign carriers that lack market power, and eliminated the ISP for arrangements with foreign carriers possessing market power on routes where at least 50 percent of the U.S.-billed traffic on the route is being settled at rates at least 25 percent lower than the relevant settlement rate benchmark. The Commission also adopted procedural changes to simplify the accounting rate filing requirements, including the elimination of the requirement that carriers making accounting rate filings with the Commission and serve every carrier that provides service on the U.S.-international route with a copy of the filing. Instead, the Commission encouraged carriers to make their accounting rate filings electronically over the International Bureau Electronic Filing System.[89]

In the 2004 *International Settlements Policy Reform Order*, the Commission concluded that the public interest is served by reforming the Commission's longstanding ISP policy.[90] The Commission found that increasing competition on many

[88] *1998 Biennial Regulatory Review: Reform of the International Settlements Policy and Associated Filing Requirements,* IB Docket No. 98-148, Report and Order and Order on Reconsideration, 14 FCC Rcd 7963 (1999) (*1999 ISP Reform Order*).

[89] *See FCC Announces Elimination of Existing Service Requirement in 64.1001(k),* Public Notice, DA 99-1558 (rel. Aug. 6, 1999).

[90] *International Settlements Policy Reform, International Settlement Rates Order,* IB Docket 02-324, First Report and Order, 19 FCC Rcd at 5709 ¶ 43 (2004) *(2004 ISP Reform Order)*.

U.S.-international routes, accompanied by lower settlement rates and calling prices for U.S. customers, permitted it to adopt a more limited application of the ISP. It removed the ISP from all routes on which the carriers had negotiated benchmark-compliant rates. Lifting the ISP on those routes allows U.S. carriers greater flexibility to negotiate arrangements with foreign carriers. The Commission determined that this approach would encourage market-based arrangements between U.S. and foreign carriers that would further long-standing policy goals of greater competition in the U.S.-international market and more cost-based rates for U.S. consumers. The Commission also modified current contract filing requirements with respect to non-ISP routes. Furthermore, in view of the removal of the ISP from benchmark-compliant routes, the Commission eliminated its ISR policy[91] and associated filing requirements. The Commission also adopted certain regulatory safeguards to protect U.S. customers from anticompetitive conduct should it occur in the future. The Commission retained current benchmarks policy subject to further evaluation as to whether future modifications are warranted. Finally, the Commission amended its rules to reflect and implement the actions taken in this proceeding.

On August 5, 2005, the Commission adopted a Notice of Inquiry seeking comment on ways to improve the process available to the Commission to protect U.S. consumers from the effects of anticompetitive or "whipsawing" conduct by foreign carriers.[92] In addition, on March 13, 2006, AT&T, Sprint Nextel Corporation and Verizon filed a joint petition requesting that the Commission remove the ISP requirements from the remaining U.S. international routes that are subject to the ISP.[93] These proceedings are ongoing.

Comments

There were no comments filed on the Part 64 subpart J rules

[91] International Simple Resale (ISR) involves the provision of switched services over resold or facilities-based private lines that connect to the public switched network at either end-point. ISR policy seeks to prevent potential harm to U.S. consumers and competition by promoting more cost-based settlement rates on U.S.-international routes. Instead of U.S. carriers paying for the use of half of a shared circuit to a foreign point through traditional settlement payments, U.S. carriers under ISR arrangements may connect or lease a complete or whole circuit end-to-end to the corresponding foreign carrier's network and pay a negotiated rate for termination of services on the foreign network that does not comply with the strict requirements of the ISP.

[92] *Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct,* IB Docket 05-254, Notice of Inquiry, 20 FCC Rcd 14096 (2005).

[93] *Joint Petition for Rulemaking to Further Reform the International Settlements Policy,* RM-11322 (filed by AT&T Inc., Sprint Nextel Corporation and Verizon on March 13, 2006). *See Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemakings Filed*, Public Notice, Report No. 2764 (rel. March 20, 2006).

Recommendation

The Commission recently reviewed and amended the international settlements policy in the *2004 International Settlements Policy Reform Order*.[94] In 2005, the Commission adopted a Notice of Inquiry seeking comment on ways to improve the process available to the Commission to protect U.S. consumers from the effects of anticompetitive or "whipsawing" conduct by foreign carriers.[95] In addition, AT&T, Sprint Nextel Corporation and Verizon filed a joint petition requesting that the Commission remove the ISP requirements from the remaining U.S. international routes that are subject to the ISP.

Staff finds that the rules in this subpart may no longer be necessary as the result of meaningful economic competition between telecommunications service providers. We therefore recommend initiation of a proceeding to consider the proposal from AT&T, Sprint, Nextel and Verizon to remove the ISP requirements from the remaining international routes that are subject to the ISP. Eliminating the ISP would provide U.S. carriers flexibility to negotiate market-based arrangements on all international routes. We also recommend in that same proceeding that the Commission propose changes in the Commissions rules to improve the process available to the Commission to protect U.S. consumers from the effects of anticompetitive conduct by foreign carriers. The proceeding would be initiated based upon the records established by the U.S. carriers' petition to eliminate the ISP and 2005 Notice of Inquiry concerning anticompetitive conduct by foreign carriers. We believe that the Commission should consider eliminating the ISP requirements and strengthening the rules against anticompetitive conduct.

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[94] *2004 International Settlements Policy Reform Order*, 19 FCC Rcd 5709.

[95] *Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct,* IB Docket 05-254, Notice of Inquiry, 20 FCC Rcd 14096 (2005).